IN THE SUPREME COURT OF MISSISSIPPI
Cause No. 2016- M-00060

CYNTHIA N. ALMOND, *et al* PLAINTIFF/PETITIONER

VERSUS

SINGING RIVER HEALTH SYSTEM, *et al* DEFENDANTS/RESPONDENTS

On appeal from the Chancery Court of Jackson County
CYNTHIA N. ALMOND, *et al* v. SINGING RIVER HEALTH SYSTEM, *et al*
Cause No. 2014-2653-NH

PETITION FOR CITATION FOR CONTEMPT OF COURT AS TO L. BRELAND HILBURN AND FOR OTHER RELIEF

COMES NOW the Plaintiff, CYNTHIA N. ALMOND, *et al,* by and through her attorneys of record, DENHAM LAW FIRM, PLLC, and BARTON LAW FIRM, PLLC, and would file this Petition for Citation for Contempt of Court as to Judge L. Breland Hilburn and for other Relief, and would show unto the Court as follows:

INTRODUCTION

1.

The facts of this case are more akin to a John Grisham novel than a typical case. It is only natural that it is hard to believe that there exists today such a broad and wide ranging conspiracy described herein, but Petitioner would ask that this Court consider that this case concerns a fraud involving approximately $150,000,000.00. At this point, no criminal charges have been filed, nobody has yet been determined to have any personal liability for the fraud, and the only participants who lost jobs are hospital trustees, essentially volunteers who get paid $150.00 per meeting. The trustees have become the scapegoats for an entire system run amuck, and with a few top executives at the helm making financial decisions to utilize a large amount of

money for other purposes which was owed into a retirement plan of Singing River Health System ("Plan.)

To get the full picture, one must begin in 1984, when Singing River Health System (hereinafter "SRHS") was removed from the state PERS retirement plan to start its own Pension Plan ("Plan"). In this 140 plus page document setting out the SRHS Pension Plan, SRHS agreed to provide lifetime retirement benefits to every employee who vested with the system after ten (10) years. The employees were mandatorily required to have three percent (3%) of their paychecks held back and placed into the Pension Plan as a condition of their employment. SRHS was to put in an amount necessary to fund the plan each year as determined by actuarial reports. This was known as the Annual Required Contribution, (hereinafter referred to as "ARC"). At all times the trustees of the Plan and the executives of the hospital owed a fiduciary duty concerning the plan's assets to the retirees, including Petitioner/Plaintiff, CYNTHIA N. ALMOND.

In 2009, certain persons at SRHS determined that the retirement plan was adequately funded and decided the money that should have been used for the ARC could be used elsewhere, thus essentially "robbing from Peter to pay Paul." Unaware of this breach of contract, the employees continued to contribute their mandatory three percent (3%) by automatic deduction until this fraud could no longer be concealed in Fall of 2014 and up until this point, they had no idea their pension was in such dire trouble. At that time, and totally contrary to logic, a hard freeze was implemented by SRHS trustees so that the three percent (3%) mandatory contribution was stopped. In fact, no contributions have been paid into the plan since November 2014 by SRHS or any employees, it has only been depleted each month at a rate which is remarkably high.

In the Spring of 2014, long time Chief Executive Officer of SRHS, Chris Anderson, resigned from SRHS to take a position at Baptist Medical Center in Jackson, Mississippi. Also at that time, the longtime accounting firm of KPMG, a former employer of Mr. Anderson, which did the Hospital's accounting, was replaced by the Horne Group to complete the auditing procedures of the hospital. The reason for this change in accounting firms in unclear, and due to the stay in discovery, it has been a question not yet answered. Nevertheless, the Horne Group brought to light the fact that eighty-eight million dollars ($88,000,000.00) was being wrongfully carried as an asset by the hospital, when in fact this amount was uncollectible patient accounts, a liability, and in no way should be considered an asset. The transfer of the eighty-eight million dollars obviously affected the bottom line and financial situation of SRHS, by $176,000,000.00, but this in turn, affected the bond requirement of SRHS.

SRHS carries a bond indebtedness of approximately One-Hundred and Five-Million dollars ($105,000,000.00) which is guaranteed by Jackson County, Mississippi, the owner of SRHS. Part of the bonding requirements are that SRHS shall maintain sixty-five (65) days of available cash on hand. The costs necessary to run SRHS is almost $800,000.00 per day. With the hospital now losing eighty-eight million dollars ($88,000,000.00) in previously reported assets, it became necessary for the new CEO, Kevin Holland, the new CFO, Lee Bond, and upon information and belief, the longtime attorney for SRHS, Roy Williams from Dogan & Wilkinson, PLLC, to fly to New York to seek a waiver of the required sixty-five (65) days cash on hand, which is of importance, because if SRHS does not have the required amount of cash on hand, the bonding company can take over the administration of the hospital if they believe their indebtedness is not secure.

Critical to this timeline are the assembly of which has been deliberately impended by Judge L. Breland Hilburn and his Special Master, Britt Singletary, the uncontroverted facts that SRHS had not made an employer contribution to the retirement plan since 2009, and possibly did not make required contributions in years prior, and yet during this time frame of 2009 to 2014, a select group of presently unidentified administrators at SRHS who knew that SRHS was not paying to the retirement system caused to be , mailed out annual employee benefit statements indicating how much SRHS had contributed to the retirement plan in the previous year, including the years when it had paid nothing.. This was a lie, a fraud.

During the same time frame, the Appellant has discovered through very limited discovery, a fraudulent scheme whereby the administrators of SRHS would present their budgets to the Trustees of SRHS asking for employee raises, and showing available monies. Appellant has only been allowed to take two (2) depositions during this litigation, but of those two (2) depositions, former trustee, Morris Strickland said the trustees would approve across the board raises of between one-half percent or one and a half percent for all employees. He testified that the trustees believed the raises were necessary to keep good personnel at SRHS even though they were fully aware that the retirement plan was not being funded. Then, former CFO Mike Crews, who left SRHS as a non-vested Plan Participant after 9½ years due to medical leave, testified that his beginning annual salary was $192,000.00 and his ending annual salary 9½ years later was $304,000.00. There are many Plan Participants who worked twenty (20) or more years without a significant raise such as the salary increases received by the executives. And the administrators lied and misled the retirees about the employer contributions through the United States Postal Service and by other means, all the while giving themselves outrageous pay raises.

In the Summer and Fall of 2014, the SRHS administrators, devised a plan to terminate the retirement plan. Under the terms of the retirement plan, there was an absolute contractual right to modify, to amend, or to terminate the SRHS retirement plan. In fact, one provision of the plan states that in the event of the termination of the plan, any monies owed by the employer at that time was a debt forgiven and not owed to the Plan or Plan Participants. In the Fall of 2014, on the eve of inevitable disclosure, upon information and belief, the administrators conspired with at least some members of the Jackson County Board of Supervisors, and the SRHS Board of Trustees to secretly terminate the retirement plan through several meetings. At that time, the plan was about forty-seven percent (47%) underfunded, with plan assets of approximately $152,000,000.00. Fortunately a few select employees of SRHS became aware of the financial crisis, and alerted the news media as to what was transpiring, even though the exact extent of the conspiracy was, and still is, unknown because of the actions of the appointed Judge and his Special Master to deliberately impede discovery sought in a Bill for Discovery, the first pleading in any court filed over this scandal.

In November 2014, attorneys Harvey Barton and Earl Denham formed a joint venture partnership to try to stop the termination of the Pension Plan. A temporary restraining order (TRO) was sought and granted in Jackson County Chancery Court on December 5, 2014. Unknown to the Appellant at the time of filing was the fact that the trustees of SRHS had already voted to terminate the plan, but had failed to sign their minutes of the secret meeting. When that fact became evident, Barton and Denham filed a series of six (6) TRO's, each one being wrongfully removed to Federal Court by the Defendants, and subsequently remanded back to Jackson County Chancery Court for adjudication. Since a TRO expires if not heard within ten (10) days, it was necessary to continue to file TRO's to stop the trustees of SRHS from signing

the minutes of the previous meeting to complete the termination process according to the Plan, as the minutes still had to be signed. Now over fourteen months later the retirees are continuing to receive their earned monthly benefits as a result of the actions of Barton and Denham, who have not been paid a dime in attorney fees for their efforts, but simply wanted to save the Plan from termination and discover what happened in the process, which transpired from secret meetings and secret consultations with lawyers and actuaries, and utilize the information to make the plan participants whole and recover from such wrongdoing as could be discovered.

LEGAL ARGUMENT REQUIRING RECUSAL

2.

The Code of Judicial Conduct provides additional legal authority for the recusal of a judge (See Code of Judicial Conduct, Canons 2 and 3.) Judicial canons enjoyed the status of law and are enforced rigorously by the Mississippi Supreme Court. *Walmart Stores v. Frierson*, 818 So.2d 1135 (Miss.2002), "A judge must avoid all impropriety and appearance of impropriety." Comment to Canon 2(a). "The test for appearance of impropriety is whether, based on the conduct, the Judge's impartiality might be questioned by a reasonable person knowing all of the circumstances." *Id.*

Specifically, Canon 3E(1) provides that "judges should disqualify themselves in proceedings where their impartiality **might** be questioned by a reasonable person knowing all of the circumstances or for other grounds. . . ." (Emphasis added). This is certainly an objective standard. The commentary to Canon 3E(1) explains that this standard applies regardless whether any of the specific grounds for disqualification exists. In conjunction with this Canon, the Supreme Court has consistently held that the objective is that of a "reasonable person knowing all of the circumstances" is the proper standard to determine if a judge should recuse himself.

Dodson v. Singing River Hospital System, 839 So.2d 530¶ 9 (Miss. 2003); See also *Miss. United Methodist Conference v. Brown*, 929 So.2d 907 (Miss. 2006); *Farmer v. State*, 770 So.2d 953, 956 (Miss. 2000).

SRHS then asked Judge Harris, Chancellor in the 19th District to recuse himself on the basis of what he ***might*** do in this litigation. This Court, in an *En Banc* Order, required Judge Harris' recusal "based on a totality of the circumstances." (*Singing River Health System v. Cynthia N. Almond, et al*, No. 2015-M-00332, (Miss. 2015)), order attached hereto as **Exhibit "A-1".** Judge Breland Hilburn was then appointed by the Supreme Court, and has, in almost one year of litigation in which he has been involved, only allowed Appellant to take two depositions, has not required SRHS to comply with MRCP in terms of answering discovery, and in a 43 page docket, other than allowing the Appellants to get their bond money back from the filing of the TRO's, not made a single favorable ruling on behalf of Denham and Barton and the Plan Participants represented by the two (2) attorneys. Rather, Judge Hilburn has, upon information and belief, engaged in a plan and conspiracy to control the litigation so as to allow all responsible parties to be free of liability or exposure when in fact this appears to be the largest accounting fraud in the state, possibly the region. The Federal Court class action to which Judge Hilburn believes is necessary to resolve the litigation, is a mandatory, non-opt-out class certification in which the beneficiaries of the Plan are not allowed to choose their own attorneys, even if they are already represented, and will be forced to accept a settlement that guarantees nothing to them and does not provide for checks and balances with those managing the Plan, and is not in the best interest of those who paid into the system and fulfilled their obligation and are now being denied their right to due process in the Chancery Court of Jackson County. If Judge Hilburn is allowed to recuse himself from only the cases where Plaintiffs are represented by Barton and Denham, it

is of no consequence to the overall litigation and in fact does nothing to remove his admitted bias from this litigation. Should the class action be allowed to conclude, Judge Hilburn and the Special Fiduciary, Stephen Simpson, will have absolute control over a retirement plan that is destined to fail. No one, save the attorneys who are representing liable parties in this litigation, or the attorneys who stand to make more than 6.4 million dollars in attorneys' fees at the conclusion of the class action, asserts that Judge Hilburn has the best interest of all the retirement plan beneficiaries in mind. Judge Hilburn and all of those appointed during his presiding over the case, including but not limited to: Special Master Britt Singletary and Special Fiduciary Stephen Simpson, should be forced to recuse themselves from any aspects of this litigation.

Between the secret clandestine meetings with certain parties, the refusal to allow appellant to litigate the matter in the Jackson County Chancery Court as directed by the Mississippi Supreme Court, the continued stay in discovery to the detriment of the Plaintiff and others similarly situated, the abbreviated hearings, the obvious push toward involving himself personally in Federal Mediation and litigation, refusing to allow the Chancery court proceedings to follow the natural course of litigation as provided by Plaintiff's right to due process and now the blatant refusal to hold a hearing on the Motions for recusal as directed by this Court, Plaintiff has no other option for relief.

3.

This Court has jurisdiction of the parties and of the subject matter in this cause of action.

4.

On or about January 15, 2016, an Emergency Motion for Omnibus Relief was filed on behalf of the Plaintiff with this Court. A copy of the Motion for Omnibus Relief without exhibits is attached hereto as **Exhibit "A."**

5.

The Supreme Court of Mississippi entered an Order filed on or about January 19, 2016, requiring a response from each of the persons who were in attendance at the meeting which was the subject of the Emergency Motion for Ombibus Relief filed by Plaintiff. Responses were required to be submitted to the Court by Attorney Brett Williams, Attorney Kelly Sessums, Attorney and former Judge Stephen Simpson, Attorney William Guice, III, Attorney James Reeves, Attorney and City Court Judge Matthew Mestayer, Attorney Scott Taylor, Special Master Britt Singletary, and Special Appointed Judge L. Breland Hilburn and all responses were due by Tuesday, January 26, 2016, order attached hereto as **Exhibit "B."** Said statement and Exhibit "C" are as a whole an admission of judicial and professional impropriety and are in many aspects contradictory.

6.

On or about January 19, 2016, Defendant, SINGING RIVER HEALTH SYSTEM responded to the Emergency Motion for Omnibus Relief *sua sponte*, response attached hereto as **Exhibit "C."**

7.

On or about January 21, 2016, Judge L. Breland Hilburn filed his response to the Emergency Motion for Omnibus Relief, attached hereto as **Exhibit "D."** In Judge Hilburn's response, Judge Hilburn states that it is a practice of his to meet with Special Master Singletary to get updates on the progress "on the federal court class action case," a case in which herein Judge Singletary nor Judge Hilburn is a Judge or Special Master. In his statement, Judge Hilburn stated that(at the secret, ex parte meeting of January 12, 2016) he "immediately told them that there would be no discussion of any state court matters," assuming "them" meant those listed in

paragraph VII (7), (along with Celeste Olgesby who was not identified prior to filing the Emergency Motion for Omnibus Relief, thus no statement was required by the court) and then informed "them" that they would not need to be at the scheduled hearing scheduled at the "Jackson County Courthouse the following day, as he had already prepared an email temporarily staying the state court litigation and canceling the hearing…" In his response to the Court, Judge L. Breland Hilburn also wrote that he signed an Order for the Special Master and two Orders for the Special Fiduciary, both of which were entered later that same day in the Jackson County Chancery Court matter styled *Cynthia N. Almond, et al v. Singing River Health System, et al*, No.: 2014-2653, the exact state court action in which Judge L. Breland Hilburn said that he did not discuss ex parte. Incidentally, the Orders were presented and approved and signed in Biloxi, Harrison County, Mississippi, where this Chancellor had no jurisdiction, nor where venue was proper.

8.

On or about January 22, 2016, Attorney and Board of Trustee member Scott Taylor submitted his response to the Court. In his response, Taylor stated that Special Master Singletary instructed him as to not speak about the state case and that once Judge Hilburn arrived, he did so as well. Then, in the spirit of not discussing the Jackson County Chancery Court proceedings, Judge L. Breland Hilburn announced to all in the meeting that he intended to stay the proceedings in "his court" (Jackson County Chancery Court). Taylor's response attached hereto as **Exhibit "E."**

9.

On January 25, 2016, William Lee Guice, III, filed his response with the Court as Special Counsel for Jackson County, attached hereto as **Exhibit "E-1"**. In his account of the events that

took place during the meeting, he stated that Judge Hilburn was only present for a few short minutes and that Judge Hilburn stated there "would be no discussions of pending motions to be heard the next day in Chancery Court… and that he had decided to stay all matters in the Chancery Court," in essence making a decision regarding cases in which the attorneys involved, Denham and Barton, were not present, nor invited to with no hearing on SRHS's Motion to Stay filed in the Jackson County Chancery proceeding. It was then stated in Guice's response that Special Master Singletary offered Judge Hilburn a separate office to formulate and send an email, something that none of the other attendees mentioned in their sequence of events filed with the Court. Guice later stated during a Jackson County Board of Supervisor's monthly meeting that the meeting held on or about the 19th of January, 2016, that at the meeting, most of time they talked about football and told jokes.[1] For those who have their livelihood at stake, this is no joking matter.

10.

On January 25, 2016, Attorneys Kelley Sessums and Brett Singletary also submitted their response to the Court attached hereto as **Exhibit "F,"** stating a similar sequence of events as that of Taylor, that Judge Hilburn did in fact speak about the Jackson County Chancery proceedings which were to occur the next day, and announced that he was going to stay the proceedings.

11.

Before the deadline for all responses from the parties who were in attendance at the ex parte meeting expired, the Mississippi Supreme Court entered a second Order filed January 25, 2016, requiring an additional response from Special Appointed Judge L. Breland Hilburn as to

[1] Paraphrased from Jackson County Board of Supervisor's meeting when Supervisor Taylor asked about the topics discussed at the ex parte meeting.

the basis for his entering a stay of trial court proceedings in the Chancery Court of Jackson County, *Almond v. SRHS, et al* Cause No.: 2014-2653, Order attached hereto as **Exhibit "G."**

12.

On or about January 26, 2016, the day after the Order of the Supreme Court requesting an additional response from Judge Hilburn was entered, a response was filed with this Court by Judge Hilburn, **Exhibit "H,"** explaining that:

> **On January 11th I was reviewing all motions noticed for January 13th which had not been previously ruled on by the court. It was my belief that the state court activity was a distraction, causing the parties to not focus on settlement of the case. That evening I drafted an email ordering a temporary stay of the state court cases which I was going to transmit to all parties once I determined that the federal parallel litigation was still on track.**

In Judge L. Breland Hilburn's letter in response to the Court's Order for an explanation of his actions, Judge Hilburn stated that he believed that the state proceedings, which he was appointed to oversee and adjudicate, were a "distraction." It has been apparent that since the beginning of the Chancery Court litigation, Judge Hilburn has allowed the Federal cases and certain attorneys to determine his rulings in the Chancery Court cases, preventing and circumventing Plaintiff's right to due process. Also, it is not mentioned in his response that two of the Motions which were noticed for the hearing scheduled on January 13, 2016, were Plaintiff's Motion for Recusal of Judge L. Breland Hilburn and the Motion for Recusal of Special Master Singletary.

13.

On January 26, 2016, Special Fiduciary Stephen B. Simpson, through his attorney, Charles Mikhail, submitted his response as ordered by this Court and attached hereto as **Exhibit "I."** His response did not detail any specific sequence of events of said meeting. On or about January 15, 2016, the day the Emergency Omnibus Motion was filed in this court, former Circuit

Court Judge Simpson contacted Plaintiff's counsel, Earl Denham by telephone, inquiring about Judge L. Breland Hilburn's stay and if it stayed the statute of limitations on his filing a complaint on behalf of the Plan Participants in Circuit and/or Chancery Court. Simpson stated that he was going to file and expressed surprise concerning Judge Hilburn's Chancery Court Order entered. Denham inquired as to Simpson's knowledge of any meeting or hearing occurring on January 12, 2015, where Hilburn heard Defendant's Motion to Stay, and inquired as to Judge Hilburn's signing of several other Orders entered without motions or invoices. Simpson expressed surprise again, and denied knowing anything about a meeting or hearing, despite his being present at the very meeting in Biloxi, Mississippi, at Special Master Singletary's office the afternoon of January 12, 2016, when the stay was discussed, and fifty (50) minutes later, the email was sent from Judge Hilburn staying all Chancery Court proceedings and the Orders for the Jackson County Chancery Court matter were entered. Affidavit of Earl Denham, reflective of the content of the phone call is attached hereto as **Exhibit "J."**

14.

On or about January 26, 2016, Special Master Singletary filed his response with the Court, asserting several inaccuracies and personal attacks on Denham and Barton, but most interestingly, also confirmed that the stay of the Chancery Court proceedings was announced, thus discussed, though the series of his account of events is slightly different than the accounts of others at the meeting. Special Master Singletary's response is attached hereto as **Exhibit "K."**

15.

Attached hereto as **Exhibit "L,"** is the statement filed with the Court from Attorneys Jim Reeves and Matthew Mestayer. Both Mr. Reeves and Mr. Mestayer stated that Judge Hilburn stayed the Chancery Court cases based on the actions and proceedings of the Federal Court

mediation, which was allegedly the reason behind the meeting according to all accounts submitted to this Court by those who were in attendance. Plaintiff avers that because of this ex parte meeting to discuss the status of the pending Federal Settlement, it negatively impacted the Plaintiff and her properly noticed motions, her right to due process by having a hearing, and resulted in an email order sent by Judge Hilburn at 4:51pm the day before the scheduled hearing, staying all Chancery Court Proceedings.

16.

After each party submitted their response to this Court, an Order was entered on or about January 28, 2016, finding that "Special Appointed Judge L. Breland Hilburn shall, within the next ten (10) days, conduct a hearing and issue a ruling on the matters of recusal of Special Appointed Judge L. Breland Hilburn and Special Master Britt Singletary, and staying all other proceedings." Order attached hereto as **Exhibit "M."**

17.

Upon receipt of the Mississippi Supreme Court Order, on January 28, 2016, Attorney Earl Denham immediately sent correspondence to Judge Hilburn, copying all attorneys of record, requesting that Judge Hilburn reserve two (2) consecutive days, and advising Judge Hilburn of Denham's obligation to host the Southern Trial Lawyers Association annual CLE and conference as the president of the organization, and his prior commitment to the CLE event from February 3, 2016, until February 7, 2016, which had been scheduled for more than eighteen (18) months. Correspondence attached hereto as **Exhibit "N."**

18.

On or about Friday, January 29, 2016, at approximately 4:45pm, an email was sent by Special Master Singletary's assistant on behalf of Judge Hilburn stating that the hearing would

be held at the Jackson County Courthouse in Pascagoula, Mississippi, on Friday, February 5, 2016, at 10:30 a.m. to hear the Motion for Recusal of Judge Hilburn and Special Master Britt Singletary as ordered by the Supreme Court . The email also stated that both Barton and Denham were required to attend the hearing, but that it was "optional" for other counsel. Email correspondence attached hereto as **Exhibit "O."**

19.

On February 1, 2016, Denham sent correspondence to Judge Hilburn, copying all associated attorneys, requesting that he reconsider the date and time, both due to Denham's hosting a CLE in New Orleans for the Southern Trial Lawyers Association, and the lack of time allotted with Judge Hilburn scheduling the hearing to begin at 10:30 am on a Friday afternoon. Letter attached hereto as **Exhibit "P."** As of the date of this filing, no response to this correspondence from Judge Hilburn has been received by Plaintiff's attorneys Denham or Barton.

20.

On Monday, February 1, 2016, on or about 4:44 pm, an email was received from Special Master Singletary's assistant sent on behalf of Judge Hilburn stating that an Order had been entered pursuant to the Supreme Court directives and that the hearing originally but unofficially scheduled for February 5, 2016, was no longer necessary. Email is attached hereto as **Exhibit "Q."** No Order was attached to aforementioned email, and wasn't filed with the Jackson County Chancery Court until February 3, 2016.

21.

On or about February 3, 2016, Judge Hilburn entered an Order in the Jackson County Chancery Court in the cases of *Almond* (No.: 2014-2653), *Thompson* (No.: 2014-2695), *Bosarge*

(No.: 2014-2729), *Aguilar* (No.: 2014-2753), *Drury* (No.: 2015-001), and *Eiland* (No.: 2015-0030), notably only listing the Jackson County Chancery Cases of Barton and Denham's plaintiffs. In the Order, attached hereto as **Exhibit "R,"** Judge Hilburn states that in April 2015, (prior to his hearing any evidence and shortly after his appointment), he felt it was necessary for him to make a decision as to which format the SRHS Retirement Trust Litigation would follow, Federal Mediation or Chancery Court litigation. Judge Hilburn in fact was not charged with that task by the Mississippi Supreme Court Order appointing him to preside over the Jackson County Chancery Court cases, cases which were initially established by both Denham and Barton and their persistence in obtaining temporary restraining orders in the Chancery Court of Jackson County in order to stop the attempt at termination of the pension plan. Judge Hilburn stated in his order filed February 3, 2016, that he does not controvert the factual basis set out in the motion to recuse nor does he controvert the factual basis set out in Denham and Barton's motion requesting that Special Master Singletary be removed from his appointment. Judge Hilburn cancelled the unofficially noticed but Court ordered hearing that was set via email and blatantly refused to obey the Order of the Mississippi Supreme Court by denying the Plaintiff her right to have a hearing within the ten (10) days as Ordered by this Court and entering his Order with the Jackson County Chancery Court denying the two (2) motions without a hearing and stating that he would not in fact have a hearing unless his Order was appealed.

22.

On February 4, 2016, Judge Hilburn entered an Order in the Chancery Court of Jackson County citing that he has "completely complied with all directives of the Mississippi Supreme Court" and recused himself from all of Denham and Barton's cases, but not addressing the other Chancery cases as the presiding Chancellor. Order is attached hereto as **Exhibit "S,"** over which

he and Singletary intend to preside, despite their judicial misconduct and Judge Hilburn's written statement, the factual basis of the assertions made against him and also Special Master Singletary, which facts are then sufficient to remove both.

23.

On or about February 8, 2016, approximately eleven (11) days after the entry of the Order of the Supreme Court directing Judge L. Breland Hilburn to hold a hearing within ten (10) days, attorney Earl Denham sent a letter to Special Master Singletary and Judge Hilburn requesting their immediate recusal and pointing out that both were in willful and contumacious contempt of the Order of the Mississippi Supreme Court. Letter attached hereto as **Exhibit "T."** As of the date of this filing, no response to the letter was received by Denham or Barton to the letter dated February 8, 2016, from Judge Hilburn, but Special Master Singletary sent a vitriolic email dated Tuesday, February 9, 2016, at 9:05am, attached hereto as **Exhibit "U."**

24.

Though Denham and Barton's cases have been severed from the other Plaintiff's cases, by Judge Hilburn, Denham and Barton represent more than two-hundred (200) retirees in both Chancery and Circuit court matters pertaining to the Singing River Health System Plan and Trust. Judge Hilburn removing himself from only Barton and Denham's cases only is surely not what this Court contemplated, as the Court Ordered him to have a hearing within ten (10) days, and he blatantly refused to do such, in willful contempt of this Court's Order that Appointed him to preside over the Jackson County Chancery Court matters, and his continued involvement with any of this litigation would be an affront to this Court and would create in the eyes of a reasonable person the appearance of impropriety.

25.

With Judge Hilburn and Special Master Singletary, along with the others who were in attendance at the ex parte meeting which resulted in a stay in the Chancery Court proceedings are now placing themselves in the position to sign off on a settlement in the Federal Court, after denying due process to the Chancery Court Plaintiffs, and circumventing the Order of the Mississippi Supreme Court to hold a hearing on the merits of the two (2) Motions for recusal, facts which were **not denied** by Judge Hilburn. Plaintiff was denied a hearing on her motions, and now the same players are using the guise of a Chancery Court appointment Special Master Britt Singletary to facilitate a Federal Court settlement which guarantees nothing but 6.4 million dollars in attorney fees to class counsel and a small contribution from Jackson County, when only a small amount discovery has even been done in the Chancery Court because Special Master Singletary and Judge Hilburn conspired to, with others, stay discovery.

26.

It is important to note that Judge Hilburn did not controvert any facts in either of the Motions for recusal (and second/amended Motion for Recusal), thus rendering all the facts admitted in both the Motion for Recusal of Judge L. Breland Hilburn and the Motion for Recusal of Special Master Singletary, only stating that he did not believe that his actions breached his duty to the extent of recusal. Plaintiff strongly disagrees, as set forth in the basis of both motions, attached hereto as **Exhibits "V" and "W"** and incorporated herein.

27.

When Judge L. Breland Hilburn recused himself from Denham and Barton's Jackson County Chancery Court matters, he deliberately chose to continue to preside over the other Jackson County Chancery cases, those represented by Attorney Cal Mayo and Attorneys Reeves

and Mestayer. His recusal from Denham and Barton's cases were in an apparent effort to circumvent the intent of the Order of the Supreme Court, however he and Special Master Britt Singletary have tainted the entire case, essentially meddling and manipulating the Chancery Court cases and deliberately stalling them in a way that deprives Plaintiff of her due process, all while forcing Federal mediation and Federal court orders down the throats of the Plaintiffs who were once wrongfully removed to the Federal Court and subsequently remanded back to Chancery court for adjudication. They have both used the Federal Court to circumvent this Supreme Court matter, which is a clear injustice to the Plaintiff and others similarly situated.

28.

Judge L. Breland Hilburn should not be presiding over any Singing River litigation, as he has both willfully disobeyed this Court and has now attempted to pull the wool over the eyes of the Supreme Court by recusing himself from only Barton and Denham's case so that he may maneuver behind the scenes with the Special Master Singletary and others, as he has been doing for nearly a year, depriving this Plaintiff and others similarly situated due process at every turn, and making a mockery of the entire judicial process as we know it with abbreviated hearings, orders entered without filed motions or hearings, and a myriad of other due process infringements.

29.

A Special Master derives his powers from the Judge, and when Judge L. Breland Hilburn recused himself from Denham and Barton's cases by his Order entered in the Jackson County Chancery Court, Special Master Singletary lost his ability to preside over the case, and for good cause, as he too has been part of tainting the entire process, denying discovery when he was appointed to expedite it, and forcing the application and implementation of the Federal

proceedings on the Chancery Court proceedings, neither of which should be comingled. Special Master Singletary even held a hearing regarding appointing Attorney Steve Simpson as the Trustee of the Plan, a power that Singletary was only granted with a "*Nunc pro tunc*" order entered by Judge L. Breland Hilburn after the hearing was held, as it was apparent the Order previously entered did not grant him those powers to hear such matters. The inflammatory hearing was held at the Jackson County Courthouse after Judge Hilburn had cancelled the hearing the day before and upon Barton's objection that there was no court reporter, Special Master Singletary denied the objection and proceeded with a heated and aggressive hearing directed toward Barton and Denham, all of which could be heard on the audio tape which has been requested by Plaintiff on several occasion so that it may be made part of the record, but any and all requests have been ignored or denied. Upon information and belief, the audio recording is not in the care, custody and control of the Jackson County Chancery Court, and the Plaintiff has been denied a copy of the audio, only to be given a transcript of the hearing which was not and cannot be certified, attached hereto as **Exhibit "X."** The transcript was not certified, and the audio recording has never been released or entered into the record, and may no longer exist.

30.

Other than the unprofessional and disgraceful nature of the Special Master's conduct in the courtroom, he announced that he had been working with all of the other judges, including the Federal mediator and Federal Judge Guirola, and other attorneys, most of which were at the ex parte meeting on January 12, 2016, and that "very shortly there is going to be an announcement and it's going to be favorable to you (addressed to the audience) and it's going to be 100 percent for you or it won't be announced." (Pg. 70 Lines 15-19) It is clear that on September 29, 2015, Special Master Singletary had obviously already been privy to some sort of deal, as he promised

to make the retirees whole in his statement in open court from the bench. Denham and Barton were never part of any "deal," as they were still attempting to properly propound and conduct discovery in the Chancery Court. This case is tainted by judicial and professional misconduct on the part of the defendants and all participants in the secret ex parte meeting and public confidence must be returned in the judicial system.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests this honorable court to remove both Special Appointed Judge L. Breland Hilburn from all Singing River Health System cases and his Special Appointed Special Master, Britt Singletary, and stay every related matter except Plaintiff's conducting discovery until a new Judge is appointed by the Supreme Court and a full review of this case is completed by the newly appointed Chancellor. This Plaintiff also requests that each person who was present at the ex parte meeting held at Special Master Britt Singletary's office on January 12, 2016, be removed from participation in all related Singing River Health System cases, and appropriately sanctioned for their unethical behavior set forth in Plaintiff's Emergency Motion for Omnibus Relief filed with this court on January 15, 2016, and Appellant incorporates and requests all relief requested therein. Plaintiff further prays for any and all relief this Court deems appropriate and for the offending parties to be sanctioned appropriately and for any and all court costs associated with having to bring this matter before this honorable Court.

Respectfully submitted,

CYNTHIA N. ALMOND
BY: DENHAM LAW FIRM, PLLC
BY: BARTON LAW FIRM, PLLC

BY: ___*/s/ Earl L. Denham*_____
EARL L. DENHAM

BY: ___*/s/ W. Harvey Barton*_____
W. HARVEY BARTON

CERTIFICATE

EARL L. DENHAM and W. HARVEY BARTON, do hereby certify that we have this day electronically filed through MEC a true and correct copy of the above and foregoing *Petition for Citation for Contempt* to all attorneys of record within the MEC filing system on this instant case.

SO CERTIFIED on this the 15th day of February, 2016.

___*/s/ Earl L. Denham*_____
EARL L. DENHAM

___*/s/ W. Harvey Barton*_____
W. HARVEY BARTON

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